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No. 95-340

In The

Supreme Court of the United States

October Term, 1995

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 751,

Petitioner,

vs.

BROWN GROUP, INC. d/b/a BROWN SHOE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Eighth Circuit correctly determined that the Petitioner, United Food and Commercial Workers Union Local 751, had failed to establish in its complaint its standing under Article III of the Constitution to assert the monetary damage claims of its members under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109.

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CONSTITUTIONAL PROVISION INVOLVED

The relevant provision of Article III of the United States Constitution provides, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the citizens thereof, and foreign States, Citizens or Subjects." U.S. Const. art. III, § 2.

STATEMENT OF THE CASE

Petitioner United Food and Commercial Workers Union Local 751 ("Union"), on behalf of its members, sued Respondent Brown Group, Inc. d/b/a Brown Shoe Company ("Brown Shoe") on June 16, 1992, in the United States District Court for the Eastern District of Missouri, alleging a violation of the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. §§ 2101-2109. The basis of the Union's complaint was that Brown Shoe's January 17, 1992 notice to its employees of the closure of its facility in Dixon, Missouri failed to provide sufficient or appropriate notice to those employees of Brown Shoe's intention to close its Dixon plant.

The Union was the collective bargaining representative of the unionized work force of the Dixon, Missouri shoe manufacturing facility of Brown Shoe.[1] Brown Shoe's non-

1. Brown Shoe's Statement of the Case assumes *arguendo* that all well-pleaded facts of the Union's complaint are true, as it must for purposes of the review of a motion to dismiss. *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

salaried employees at the Dixon, Missouri plant worked on piece rates until the plant was closed in 1992.

In its complaint, the Union alleged that Brown Shoe had violated the rights of the Union's members and Brown Shoe employees under the WARN Act. The Union sought monetary damages on behalf of two hundred and seventy-seven (277) former employees of Brown Shoe who were members of the union while they were employed. The Union alleged that Brown Shoe began the terminations of its employees on January 3, 1992 and continued those terminations during the months of February and March, 1992. The Union's complaint also alleged that assuming the January 17, 1992 WARN notice was sufficient, most, but not all, of Brown Shoe's employees had been subject to layoff before expiration of a sixty (60) day notice period on March 17, 1992. Attached to the Union's complaint was a chart outlining, by employee, the last date on which each individual performed services for Brown Shoe.

The Union filed its complaint "as representative of the aggrieved employees," and did not identify itself as proceeding on its own behalf in the caption of the complaint. It requested monetary damages **only** for the allegedly aggrieved employees and did not seek either declaratory or injunctive relief. The Union alleged in the complaint that it was "the certified exclusive bargaining representative of the aggrieved Brown Shoe employees **on whose behalf** the relief prayed for herein is sought." The Union further alleged that the complaint was filed "on behalf of" two hundred and seventy-seven employees of Brown Shoe's Dixon plant.

Within its prayer for relief, the Union sought no damages for itself aside from attorney's fees and sought no remedies derived from a collective bargaining agreement. It asserted instead a statutory WARN Act claim for back pay and fringe benefits for the allegedly aggrieved employees. The Union also added a

standard generalized prayer for "such other and further relief on its behalf and that of the aggrieved employees as may be proper."

On July 29, 1992, Brown Shoe filed a motion to dismiss the complaint on the grounds that the Union lacked standing to assert the individual monetary claims of its members. In its motion to dismiss, Brown Shoe argued that the Union did not have associational standing to bring the action on behalf of its members. Brown Shoe also argued that the Union should not be permitted to amend its complaint to add individual "aggrieved employees" as plaintiffs in order to establish subject matter jurisdiction. In response, the Union ignored the issue of the addition of parties or amendment of the complaint and instead argued that it did, in fact, have associational standing. It did not seek leave to amend its complaint to add individual plaintiffs at any time prior to the district court's ruling on the motion to dismiss. The district court, on April 12, 1993, granted Brown Shoe's motion to dismiss, concluding that it was without jurisdiction because the Union had "not alleged injury to itself" and lacked constitutional standing to bring a WARN Act claim for monetary damages on behalf of its members. The district court's dismissal of the Union's complaint was without prejudice.

Ten days later, on April 22, 1993, the Union filed a motion to alter or amend judgment, seeking leave to amend its complaint to add as individual plaintiffs the allegedly aggrieved employees whom the Union represented and to seek declaratory judgment on its own behalf. It was not until the Union filed its motion to alter or amend judgment that it raised the issue of its standing to sue on its own behalf under the WARN Act. At no time did the Union seek leave to amend its complaint to add allegedly aggrieved employees or to assert a claim on its own behalf until **after** the district court dismissed the action, even though the possibility of amending the complaint had been raised in Brown Shoe's memorandum in support of its motion to dismiss over eight months before. Instead the Union waited ten months after its

initial complaint was filed to seek leave to amend its complaint to establish a jurisdictional base for the court to rule on its members' claims for monetary damages, and it did so only when its complaint had been dismissed.

On March 7, 1994, the district court denied the Union's motion to alter or amend judgment. In his order denying the Union's motion to amend the complaint, Judge Fillippine noted, "In its original brief supporting the motion to dismiss, defendant noted the possibility that the union might want to amend its complaint. Plaintiff did not expressly address this argument, request leave to amend, or submit a proposed amended complaint at any time during the pendency of the motion to dismiss. It was only after the Court ruled against plaintiff that plaintiff sought leave to amend its complaint. (Appendix to Petition for a Writ of Certiorari [hereinafter "App."] at 18a). The court refused the Union permission to amend, concluding that "Plaintiff's unexplained delay in seeking to amend is particularly troublesome." (App. at 18a).

The Union appealed the district court's order dismissing the case and its order denying its motion to alter or amend judgment to the United States Court of Appeals for the Eighth Circuit. In affirming the district court's order, the Eighth Circuit held that the Union had failed to meet its burden of establishing either direct or associational standing, and that, therefore, the district court had properly dismissed the Union's complaint for lack of jurisdiction. (App. at 8a, 11a). With respect to the Union's direct standing to assert its own rights, the Eighth Circuit held that the relief requested by the Union in its complaint would not redress the union's asserted injury. (App. at 7a). It rejected the Union's argument that its "catch-all prayer for relief" would redress the injury resulting from Brown Shoe's alleged failure of notice to the Union. (App. at 7a). The Eighth Circuit reasoned, "We do not think that the boilerplate remedies language . . . , broad and non-specific as it is, comports with the constitutional requirement of

redressability envisioned by the Supreme Court in *Allen [v. Wright*, 468 U.S. 737 (1984)] and its other cases on the subject." (App. at 7a). The court also specifically rejected the Union's argument that the language of the WARN Act granting a union a right to sue to enforce the Act "relieve[s] the union of its obligation to meet the constitutional requirement of standing." (App. at 7a).

With respect to the Union's associational standing to assert the monetary damage claims of its members, the Eighth Circuit held that the Union had failed to meet the third part of the test for associational standing set forth by this Court in *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977), *i.e.*, that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." (App. at 9a). The Eighth Circuit reasoned that the relief the Union requested — backpay and benefits for its members — would require individualized proof because of the varying times of termination of each employee as alleged in the complaint as well as the fact that the employees "were paid on a piecework basis." (App. at 10a).

The Eighth Circuit also upheld the district court's denial of the Union's motion to alter or amend judgment and rejected the Union's argument that it should have been permitted to amend its complaint after that complaint had been dismissed. (App. at 11a-12a). The Eighth Circuit reasoned that because "the union has made no attempt to explain or to justify its delay in seeking leave to amend — in spite of having been put on notice (by the opposing party, no less) of the possible need to amend," the district court had not abused its discretion in denying the Union's motion to alter or amend judgment. (App. at 12a).[2]

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2. On January 31, 1994, while the Union's motion to alter or amend judgment was pending in the district court in this case, sixty-three of the members represented by the Union in this lawsuit filed their own complaint in (Cont'd)

SUMMARY OF THE ARGUMENT

The Petitioner in this case has not presented this Court with any grounds for the granting of a petition for writ of certiorari. There is not one issue involved in this case and upon which the Eighth Circuit ruled which has not been long settled by this Court and the federal courts of appeals. There is no disagreement between the federal appellate courts on the issue of a union's standing under the WARN Act to assert the monetary damage claims of its members under the Act. Nor is there an important question of federal law which has not been, but should be, settled by this Court or has been decided in a way that conflicts with the applicable decisions of this Court.

The Eighth Circuit did nothing more in this case than apply this Court's well-established principles of constitutional standing. Its decision that the Union lacked standing to assert its own claims was based on its application of the test for constitutional standing set forth by this Court. The Eighth Circuit's holding that the Union had also failed to establish that it had standing to assert the individual monetary claims of its members under the test set forth in *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), was entirely consistent with this Court's holding in *Warth v. Seldin*, 490 U.S. 422 (1975), that the test for associational standing reflects constitutional rather than prudential concerns. Thus, the Eighth

(Cont'd)

the United States District Court for the Eastern District of Missouri against Brown Shoe, on behalf of themselves and similarly situated employees, alleging the same violation of the WARN Act as that asserted in this case. *Aaron et al. v. Brown Group, Inc. d/b/a Brown Shoe Co.*, No. 4:94CV000207 TIA (E.D. Mo.). Plaintiffs in the *Aaron* case have amended their complaint three times to add an additional seventy-nine plaintiffs, all of whom were represented by the Union when they were employed at Brown Shoe. The *Aaron* case is currently on interlocutory appeal to the Eighth Circuit on the issue of the appropriate state statute of limitations applicable to WARN Act claims in Missouri. No. 95-2069 EMSL (8th Cir.).

Circuit's application of the *Hunt* test to the allegations of the Union's complaint was correct, as was its conclusion that Congress could not, through the WARN Act, eliminate the requirements of Article III.

In short, the fundamental principles of constitutional law and separation of powers which the Union in its petition asserts are raised by the Eighth Circuit's ruling are simply not present in this case. No valid reason exists for the granting of the petition for a writ of certiorari.

REASONS FOR DENYING THE WRIT

A. The Eighth Circuit's Ruling Raises No "Fundamental And Recurring Separation Of Powers Issue" Which This Court Need Decide.

The Eighth Circuit's determination that this Union had not adequately invoked the jurisdiction of the federal courts by failing to establish in its pleading a case or controversy under Article III of the United States Constitution was compelled by this Court's long-settled and well-established precedent. Its holding is entirely consistent with the long line of federal cases which require a litigant to establish in its pleadings that it has standing to invoke the federal court's jurisdiction, whether that litigant is seeking to enforce its own rights or, as an association, the rights of its members. Indeed, it was the Union's own failure to establish in its complaint its standing to assert its own rights and the rights of its members which compelled dismissal of its complaint rather than the application of an incorrect constitutional analysis on the part of the Eighth Circuit.

The Union's petition for a writ of certiorari is premised on a fundamental misperception of the principles of standing established by this Court and applied by the federal courts of appeals. The underlying premise of the Union's argument to this

Court — as it was in the courts below — is that because Congress, in the WARN Act, granted unions the *right* to sue for violations of the statute, it also granted unions *standing* to sue under the WARN Act. This argument ignores the consistent holdings of this Court that Congress cannot by statute eliminate the requirements of Article III. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979); *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972). Thus, in *Gladstone*, this Court held, "In no event, . . . may Congress abrogate the Art. III minimum: A plaintiff must always have suffered a distinct and palpable injury to himself . . . that is likely to be redressed if the requested relief is granted." 441 U.S. at 100 (quoting *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976)). And in *Warth*, this Court held, "Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules. Of course, Art. III's requirement remains: the plaintiff must still allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." 422 U.S. at 499.

Thus, a congressional grant of a right to sue does not in itself establish the standing of a litigant under Article III of the Constitution. Congress could not in the WARN Act confer standing on this union either expressly or impliedly in an extra constitutional manner so that the Union could assert either its own rights or the rights of its members under the statute. While Congress could in the WARN Act grant the union a *right* to sue and thus eliminate *prudential* considerations attached to standing, it could not eliminate the *constitutional* requirements of Article III. These *constitutional* requirements are precisely those that the Eighth Circuit applied.

Therefore, the "fundamental and recurring separation of powers issue" which the Union contends is raised by the Eighth

Circuit's ruling in this case is one that has long been settled by this Court. Congress does not have the ability, through the exercise of its Article I legislative powers, to confer standing to a litigant beyond the requirements of Article III. A case or controversy must still exist and it is the province of the federal courts to determine whether the requirements of Article III have been met. *Cf. Marbury v. Madison*, 1 Cranch 137 (1803). The Eighth Circuit correctly determined that "the WARN Act's provision that designates the union as a proper plaintiff to assert violations of the Act in federal court does not relieve the union of its obligation to meet the constitutional requirement of standing." (App. at 7a). The Eighth Circuit's ruling is entirely consistent with this Court's holdings in *Warth*, *Lujan* and *Gladstone* that Congress may not eliminate the requirements of Article III. Because there is no fundamental constitutional question which must be answered by this Court, there is no valid basis for granting the Union's petition.

B. No United States Court Of Appeals Has Rendered A Decision In Conflict With The Eighth Circuit's Ruling In This Case.

Contrary to the Union's misleading assertions in its petition, not one federal court of appeals has even addressed the issue of a union's standing to bring the monetary claims of its members under the WARN Act, let alone reached a decision contrary to that of the Eighth Circuit. In fact, the Eighth Circuit was the first and, as of this date, is the only federal court of appeals to confront directly the issue of a union's constitutional standing under the WARN Act to seek to collect monetary damages for its members. There is absolutely no disagreement among the circuit courts of appeals on the issue presented in the Union's petition.[3]

3. There is, however, disagreement among the federal district courts which have ruled directly on this issue. The Union erred in stating that every court which has directly confronted the issue has "concluded that there is (Cont'd)

The Union's attempt to imply a split in the courts of appeals by contending that in every case in which a federal appellate court has decided an appeal in a WARN Act case in which a union was the plaintiff, the court proceeded on the assumption that the union had standing, is nothing but legal sophistry. In none of the six cases cited by the Union, *International Alliance of Theatrical & Stage Employees v. Compact Video Services, Inc.*, 50 F.3d 1464 (9th Cir. 1995); *International Brotherhood of Teamsters v. American Delivery Service Co.*, 50 F.3d 770 (9th Cir. 1995); *United Mine Workers v. Peabody Coal Co.*, 38 F.3d 850 (6th Cir. 1994), *vacated*, ___ U.S. ___, 115 S.Ct. 2272 (1995); *United Steelworkers of America v. Crown Cork & Seal Co.*, 32 F.3d 53 (3d Cir. 1994), *aff'd sub nom. North Star Steel Co. v. Thomas*, ___ U.S. ___, 115 S.Ct. 1927 (1995); *International Union, United Mine Workers v. Jim Walter Resources*, 6 F.3d 722 (11th Cir. 1993); *United Paperworkers Int'l Union v. Specialty*

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standing." (Petition at 13). In fact, as Respondent pointed out in its brief to the Eighth Circuit, two courts, aside from the Eastern District of Missouri, have denied a union's standing to bring monetary damage claims on behalf of their members under the WARN Act. *Sales Drivers, Helpers and Dairy Employees, International Brotherhood of Teamsters, Local Union No. 683 v. Bohemian Distributing Co.*, No. 93-1592-B (AJB) (S.D. Cal. 1994); *Office and Professional Employees International Union, Local 2 v. Federal Deposit Insurance Corporation*, 138 F.R.D. 325 (D.D.C. 1991), *earlier ruling rev'd on other grounds*, 962 F.2d 63 (D.C. Cir. 1992); *see also Amalgamated Clothing and Textile Workers Union v. Brown Group, Inc.*, 879 F. Supp. 1015 (E.D. Mo. 1993). Moreover, each of the cases cited by the Union in its petition was decided *before* the Eighth Circuit issued its opinion in this case. Since the Eighth Circuit issued its opinion, only one other court has ruled directly on the same issue and it has followed the Eighth Circuit's ruling in this case, holding that a union does not have standing to assert monetary claims for a violation of the WARN Act on behalf of its members. *In re Hanlin Group, Inc.*, ___ B.R. ___, 1995 WL 511870 (Bankr. N.J. Aug. 25, 1995). These courts, as well as those listed in the petition, are the only ones which have ruled on the specific issue of a union's standing to assert the individual monetary claims of its members under the WARN Act. A split in the district courts, however, is not grounds for granting a petition for a writ of certiorari.

Paperboard, Inc., 999 F.2d 51 (2d Cir. 1993), was the issue of the union's constitutional standing to pursue the monetary claims of its members raised, argued or briefed by either party, or addressed or ruled on by either the district or the appellate courts. Thus the issue addressed by the district court, appellate court and this Court in *Crown Cork & Seal*, as this Court is aware, was the appropriate statute of limitations for WARN Act claims. ___ U.S. at ___, 115 S.Ct. at 1929. The same issue was ruled on by the Second Circuit in *Specialty Paperboard*, 999 F.2d at 52, and the Sixth Circuit in *Peabody Coal*, 38 F.3d at 851. In *Jim Walter Resources*, 6 F.3d at 723, and *American Delivery Service*, 50 F.3d at 776, the issue decided by the Eleventh and Ninth Circuits was the definition of a "single employer" for purposes of the WARN Act.[4] Finally, in *Compact Video Services*, 50 F.3d at 1468, the issue involved in Ninth Circuit's ruling was whether a sale of corporate assets was "a WARN event."[5]

The Union's argument that by reaching the merits in these cases, the courts impliedly ruled that they had jurisdiction and that, therefore, the plaintiff unions had constitutional standing, is erroneous. While it is true that a federal court has a duty to "satisfy itself not only of its own jurisdiction, but also of the lower courts in a cause under review," *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934), as a practical matter, if the issue of standing — even though it is jurisdictional — has not been raised or

4. Moreover, in *Jim Walter Resources*, an individual was named as a plaintiff in the caption of the complaint, and, as a consequence, the issue of standing raised in this case — where no individual employees were named as plaintiffs — was not present. 6 F.3d at 722.

5. Standing may still be an issue in both *American Delivery Service* and *Peabody Coal* because both those cases have been remanded, *American Delivery* by the Ninth Circuit, 50 F.3d at 778, and *Peabody Coal* by this Court's decision in *North Star Steel*, ___ U.S. ___, 115 S. Ct. 1927 (1995); *see* ___ U.S. ___, 115 S. Ct. 2272 (1995), ___ F.3d ___, 1995 WL 461295 (6th Cir. 1995). Because standing is jurisdictional, it may not be waived, and, therefore, may still be raised by any of the parties in those cases on remand.

addressed by either the parties or the lower court, an appellate court's opinion reaching the merits does not necessarily imply that the court even considered the issue of a particular plaintiff's standing. *Cf. FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 242 (1990) (Brennan, J., concurring) (Court's holding on standing "pure dictum" because issue was "not directly presented by the parties, was not reached by the court below, and is not among the questions on which certiorari was granted"); *Allen v. Wright*, 468 U.S. 737, 764 (1984) (Court's opinion in *Coit v. Green*, 404 U.S. 997 (1971), of limited precedential value on issue of standing because lower court ruling summarily affirmed in *Green* did not include ruling on issue of standing).

Moreover, as a general rule, an appellate court will not entertain an argument not presented to it or to the lower court. *Singleton v. Wulff*, 428 U.S. 106 (1976); *Hormel v. Helvering*, 312 U.S. 552 (1941); *Helverson v. Wood*, 309 U.S. 344 (1940); *Rubin v. Weinberger*, 524 F.2d 497 (7th Cir. 1975); *Hutton v. United States*, 501 F.2d 1055 (6th Cir. 1974); *Allen Industries v. C.I.R.*, 414 F.2d 983 (6th Cir. 1969). In *Singleton*, this Court stated, "The matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases." 428 U.S. at 120-21.

To infer, therefore, from the appellate courts' rulings on the merits in the cases cited by the Petitioner that those courts actually ruled on the plaintiff unions' constitutional associational standing to assert the monetary claims of their members is a strained inference at best. The Union's argument is nothing more than an attempt to establish some basis — however tenuous — for the granting of a petition for writ of certiorari when there is clearly no dispute among the federal courts of appeals on this issue. Such an interpretation of the discretionary certiorari jurisdiction of this Court is contrary to both the spirit and the letter of Rule 10 of this Court's Rules. The only federal court of

appeals to rule on the issue of a union's constitutional standing to assert the individual monetary claims of its members under the WARN Act is the Eighth Circuit in this case. There can be no split of authority in the courts of appeals when only one court has ruled on the specific question at issue.

C. The Eighth Circuit's Holding Is Consistent With This Court's Well-Established Principles Of Standing.

Article III of the Constitution restricts the judicial power of the federal courts to actual "cases" or "controversies" and the issue of standing is one at the heart of Article III. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). As this Court explained in *Warth v. Seldin*, 422 U.S. 490, 498 (1975), "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. . . . [I]t is founded in concern about the proper — and properly limited — role of the courts in a democratic society. This Court further explained the principles of standing in *Allen v. Wright*, 468 U.S. 737, 752 (1984), when it stated:

> Determining standing in a particular case may be facilitated by clarifying principles or even clear rules developed in prior cases. Typically, however, the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to adjudication of the particular claims asserted. Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?

(Citing *Valley Forge Christian College v. American United For Separation of Church and State, Inc.*, 454 U.S. 464, 472-73 (1982)).

This Court has differentiated between constitutional (Article III) standing and prudential limitations on standing. *Lujan*, 504 U.S. at 560; *Gladstone*, 441 U.S. at 99-100; *Warth*, 422 U.S. at 498. The requirement of constitutional standing seeks to ensure a concrete Article III "case or controversy" by focusing on the plaintiff's "harm." *Warth*, 422 U.S. at 498-99. Prudential standing limitations prevent a court from adjudicating "questions of broad social import where no individual rights would be vindicated and limit access to the federal court to those litigants best suited to assert a particular claim." *Gladstone*, 441 U.S. at 100. With respect to prudential considerations, Congress may grant a right to sue to persons who otherwise might be barred by prudential limitations. *Gladstone*, 441 U.S. at 100; *Warth*, 422 U.S. at 501; *Sierra Club v. Morton*, 405 U.S. 727 (1972). Congress may not, however, expand by statute the case or controversy limitations imposed upon litigants by Article III. *Gladstone*, 441 U.S. at 100; *Trafficante*, 409 U.S. at 209. As this Court held in *Valley Forge*, "[O]f one thing we may be sure: Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States." 454 U.S. at 475-76.

This Court has also distinguished immediate or direct standing from associational standing. *Warth*, 422 U.S. at 511. Immediate or direct standing exists when a plaintiff is asserting its own rights; associational standing involves enforcement of the rights of some or all of an association's members. *See Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977); *Warth*, 422 U.S. at 511. The Court has not differentiated between the associational standing of a voluntary organization with that of involuntary organization, as the Union urges it to do in this case. In either case, a plaintiff must demonstrate "such a personal stake in the outcome of the controversy as to warrant his

invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth*, 422 U.S. at 498-99 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

The questions set forth in *Allen* and the test set forth in *Warth* and *Hunt* are precisely those which the Eighth Circuit addressed and applied in this case. Its conclusion — that the Union lacked constitutional standing to assert the monetary damage claims of its members under the WARN Act — is in accord with this Court's decisions.

1. The Eighth Circuit Correctly Held That The Union Lacked Article III Standing To Sue On Its Own Behalf For Alleged WARN Act Violations.

With respect to the Union's failure in its complaint to establish its standing to assert its own claim of an alleged violation of the WARN Act, there can be no doubt that the Eighth Circuit correctly applied the test set forth by this Court to determine whether a plaintiff has established the minimum necessary for constitutional standing. "At an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant, *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979), and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision, *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38, 41 (1976)." *Valley Forge*, 454 U.S. at 472; *see also Lujan*, 504 U.S. at 560; *Allen*, 468 U.S. at 753; *Warth*, 422 U.S. at 498 (1975); *Sierra Club*, 405 U.S. at 740-41 n. 16.

The Eighth Circuit determined that the Union in this case had not alleged in its complaint the third prong of the constitutional test, an injury "likely to be redressed by the requested relief," and had not, therefore, established that it had constitutional standing

to assert its own claims. (App. at 5a).[6] In the Eighth Circuit the Union asserted that its own injury — apart from the injury to its members — was that it had not received the correct form of statutory notice of the closing of the Dixon facility required under the WARN Act. (App. at 7a). It argued that its catch-all prayer for relief would redress its alleged injury. (App. at 7a). The Eighth Circuit disagreed with the Union's argument, holding that "[w]e do not think that the boilerplate remedies language . . . , broad and non-specific as it is, comports with the constitutional requirement of redressability envisioned by the Supreme Court in *Allen* and other cases on the subject. . . . The UFCW, even if it has properly pleaded injury to itself as a result of the alleged failure of statutory notice, has not sought a specific remedy for its injury." (App. at 7a).

How the Eighth Circuit's application of this Court's test for constitutional standing to the specific facts of this case is inconsistent with the application of such a test by other federal courts of appeals or this Court's precedent is a question left unanswered — indeed, left unaddressed — in the Union's petition. As this Court instructed in *Allen*, the Eighth Circuit engaged in a "careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to adjudication of the particular claims asserted." 468 U.S. at 752. The Union in this case was required by the long standing principles of this Court to establish that it had Article III standing in its complaint. *Lujan*, 504 U.S. at 560; *FW/PBS, Inc. v. City of Dallas*, 493 U.S. at 231; *Warth*, 422 U.S. at 508; *Grace v. American Central Ins. Co. of St. Louis*, 109 U.S. 278, 284 (1883).

6. The Eighth Circuit also expressed doubt that the Union had alleged in its complaint sufficient "personal injury" to satisfy the first element necessary to establish constitutional standing, stating that "the gravamen of the union's claim clearly is injury to its members that resulted from the alleged failure of notice." (App. at 5a). The court held, however, that construing the complaint in a manner most favorable to the Union, it would "assume that its allegation of failure of statutory notice alleges an injury to the union itself." (App. at 6a).

Moreover, standing cannot be "inferred argumentatively from averments in the pleadings," *Grace v. American Central Ins. Co.*, 109 U.S. 278, 284 (1883), but instead "must affirmatively appear in the record." *Mansfield C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884); *see also King Bridge Co. v. Otoe County*, 120 U.S. 225, 226 (1887) (facts supporting constitutional jurisdiction must appear "affirmatively from the record"). In this case, therefore, the union had the affirmative duty to "allege . . . facts essential to show jurisdiction." *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). It did not do so. It was the Union's own failure, in its complaint, to assert the necessary elements of standing, which led to the dismissal of its complaint, not any error in the constitutional analysis of the Eighth Circuit.

The Union's petition for a writ of certiorari also rests on the mistaken assumption that the Eighth Circuit in this case held that a union may *never* sue an employer under the WARN Act. Thus, the Union makes the sweeping generalization that the lower court's ruling "raises a fundamental and recurring separation of powers issue," (Petition at 7), and that it "implicates not only *who* can bring suit for the statutory penalties due employees under the WARN Act, but, as a practical matter, whether anyone can." (Petition at 14).[7] This is simply not the case. The Eighth Circuit

7. The fallacy of the Union's argument that the Eighth Circuit's ruling "implicates not only *who* can bring suit for the statutory penalties due employees under the WARN Act, but, as a practical matter, whether anyone can," (Petition at 14) is demonstrated by the fact that the individual employees for whom the Union seeks to collect monetary damages in this case have filed their own action under the WARN Act to collect their own damages for the same alleged violation of the WARN Act. *Aaron et al. v. Brown Group, Inc. d/b/a Brown Shoe Co.*, No. 4:94CV000207 TIA (E.D. Mo.). Clearly, in this case, the Eighth Circuit's ruling does *not* implicate whether "anyone" can sue under the WARN Act — the individual employees clearly can. Moreover, as this Court has held, "[T]he assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 227 (1974); *see also* (Cont'd)

made clear that its holding was that **this** union had failed to establish **in its complaint** that it had constitutional standing to assert either its own rights or the rights of its members under the WARN Act. It did **not** hold, as the Union implies in its petition, that the provision in the WARN Act granting unions the right to sue was unconstitutional, that no union may ever file a lawsuit for WARN Act violations, or that no union will ever have Article III standing to file such a suit. Instead, the Eighth Circuit held that **this union** had failed in its complaint to establish the necessary elements of constitutional standing. Had the union in this case sought relief which would have redressed the alleged injury it received, it may have been able to establish direct standing to sue Brown Shoe. Had it, as the Eighth Circuit specifically held, requested only prospective relief, "the likelihood of success in asserting associational standing would have been improved." (App. at 9a). Had the union in this case ever simply amended its complaint to add as plaintiffs the individual employees who are now suing Brown Shoe in their own right, it would not have failed to establish associational standing.

The fact is, however, that the Union in this case did not bother to seek leave to amend its complaint, even when it was put on notice by Brown Shoe of the jurisdictional defects in its pleading, until **after** its complaint was dismissed by the district court. This fact was commented on by both the trial court — "Plaintiff's unexplained delay in seeking leave to amend is particularly troublesome," (App. at 18a) — and the appellate court — "Here, the union has made no attempt to explain or to justify its delay in seeking leave to amend — in spite of having been put on notice (by the opposing party, no less) of the possible

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(Cont'd)

Valley Forge, 454 U.S. at 464 ("This view would convert standing into a requirement that must be observed only when satisfied. . . . [W]e are unwilling to assume that injured parties are nonexistent simply because they have not joined respondents in their suit. The law of averages is not a substitute for standing.").

need to amend." (App. at 12a). Thus, it was the Union's own failure to establish that it had standing to sue Brown Shoe under the WARN Act which compelled dismissal of its complaint. Both the trial and the appellate courts applied the correct test announced by this Court for determining whether direct standing had been established in the Union's complaint.

2. The Eighth Circuit Correctly Held That The Union As An Association Lacked Article III Standing To Sue For Monetary Damages On Behalf Of Its Members For Alleged WARN Act Violations.

With respect to the Union's associational standing to assert the monetary damage claims of its members, the Eighth Circuit's ruling is equally in accord with the tests set forth by this Court to determine such standing. This Court has held that "[f]ederal courts must hesitate before resolving a controversy, even one within their constitutional power to resolve, on the basis of the rights of third persons not parties to the litigation." *Singleton*, 428 U.S. at 113. In *Singleton*, this Court explained the reasoning behind the rule:

> First, the courts should not adjudicate such rights unnecessarily, and it may be that in fact the holders of those rights either do not wish to assert them, or will be able to enjoy them regardless of whether the in-court litigant is successful or not. . . . Second, third parties themselves usually will be the best proponents of their own rights. The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them. The holders of the rights may have a like preference, to the

> extent they will be bound by the courts' decisions under the doctrine of *stare decisis*.

Id. at 114.[8]

When an association seeks to assert the rights of its members, as the Union has in this case, it must meet the constitutional requirements of standing just as any other Plaintiff. *Warth*, 422 U.S. at 515-16. In this case, the Eighth Circuit applied the appropriate test — the test set forth by this Court in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977) — to determine that the Union had not alleged sufficient facts to establish Article III standing to assert the monetary damage claims of its members. In *Hunt*, this Court established a three prong test to determine constitutional associational standing, each prong of which must be established in the complaint to confer standing on a litigant seeking to assert the rights of others: "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* at 343.

The Eighth Circuit correctly surmised that the Union had failed to meet the third prong of the *Hunt* test that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." (App. at 9a). Examining the requested relief — monetary damages for its members — the

8. The fact that only one hundred and forty-two former employees of Brown Shoe have asserted their WARN Act rights in the litigation which arose after the Union's complaint in this case was dismissed, rather than the two hundred and seventy-seven on whose behalf the Union prosecuted this case lends credence to this Court's suggestion in *Singleton* that "the holders of those rights either do not wish to assert them, or will be able to enjoy them regardless of whether the in-court litigant is successful or not." 428 U.S. at 113-14.

court concluded that "the damages sought are not for the UFCW's own monetary loss, nor does the union claim to have an assignment of the monetary claims of its members." (App. at 9a-10a). It reasoned that because the individual members of the union were terminated at different times and were paid on a piecework basis, "calculation of damages would require proof specific to each employee," and, hence, "[i]t is apparent that the relief the UFCW seeks here — the backpay and benefits to which its members are entitled by law — would require individualized proof." (App. at 10a).

The Eighth Circuit's reasoning is in harmony with a long line of federal decisions establishing that a union is not "the general litigating agent of its members." *United States ex rel. United Brotherhood of Carpenters & Joiners Local Union No. 20228 v. Woerfel Corp.*, 545 F.2d 1148 (8th Cir. 1976). The federal courts have consistently held that while a union may have standing to sue on behalf of its members for monetary or injunctive relief when it does so to vindicate the employees' rights under a collective bargaining agreement, a union does not have standing to assert its members' claims arising independently of a collective bargaining agreement. *New Beckley Mining Corp. v. Int'l Union, United Mine Workers of America*, 18 F.3d 1161 (4th Cir. 1994) (union lacked standing to sue employer on behalf of its members under Racketeer Influenced and Corrupt Practices Act); *United Brotherhood of Carpenters and Joiners of America v. Ohio Carpenters Health and Welfare Fund*, 926 F.2d 550 (6th Cir. 1991) (union lacked standing to sue employer under the Labor Management Reporting and Disclosure Act for monetary claims of its members); *United Union of Roofers, Waterproofers and Allied Trade No. 40 v. Insurance Corp. of America*, 919 F.2d 1398, 1400 (9th Cir. 1990) (union lacked standing to seek to recover money damages on behalf of its members for payment on a surety bond); *United Steelworkers of America v. University of Alabama*, 599 F.2d 56 (5th Cir. 1979) (union lacked standing to claim monetary damages for its members for alleged violations of

members' constitutional rights); *International Woodworkers of America v. Georgia-Pacific Corp.*, 568 F.2d 64, 66 (8th Cir. 1977) (union lacked standing to assert monetary damage claims of its members under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981); *Local 194, Retail, Wholesale and Dept. Store Union v. Standard Brands, Inc.*, 540 F.2d 864 (9th Cir. 1976) (union lacked standing to assert monetary damage claims of its members under Title VII); *Woerfel*, 545 F.2d at 1151 (union lacked standing to sue under § 301(b) of the Labor Management Relations Act for monetary damages arising outside the collective bargaining agreement under the Miller Act). It is also well established that an association's claim for monetary damages on behalf of its members requires the individual participation of those members, and, consequently, the association lacks constitutional standing to sue for those monetary damages. *Warth*, 422 U.S. at 515-16; *Insurance Corp.*, 919 F.2d at 1400; *Telecommunications Research & Action Center v. Allnet Communication Service, Inc.*, 806 F.2d 1093, 1095 (D.C. Cir. 1986); *Simer v. Rios*, 661 F.2d 655, 682 (7th Cir. 1981), *cert. denied*, 456 U.S. 917 (1982); *United Steelworkers of America v. University of Alabama*, 599 F.2d 56, 59 (5th Cir. 1979); *Georgia Pacific*, 568 F.2d at 66; *Woerfel*, 545 F.2d at 1152; *Standard Brands*, 540 F.2d at 865; *Office and Professional Employees Int'l Union Local 2, AFL-CIO v. Federal Deposit Insurance Corp.*, 138 F.R.D. 325 (D.D.C. 1991); *Organization of Minority Vendors, Inc. v. Illinois Central Gulf Railroad*, 579 F. Supp. 574, 590 (N.D. Ill. 1982).

(a) This Court's Holding In *Warth v. Seldin* Makes Clear That The *Hunt* Test Is Constitutional Rather Than Prudential.

The Union argues to this Court that the Eighth Circuit's analysis regarding its associational standing to assert the rights of its members is flawed because the lower court assumed that the third element of the *Hunt* test was a *constitutional* rather than

prudential standing requirement. The Union argues that "the third *Hunt* prong is *not* part of the bedrock injury-in-fact Article III requirement," (Petition at 18), and that, because Congress may eliminate prudential standing requirements by granting a statutory right of action to a litigant, the third prong of the *Hunt* test is inapplicable to the Union's WARN Act claims brought on behalf of its members. The Union made the same argument below, and, while not explicitly rejecting it, the Eighth Circuit did so implicitly by applying the third prong of the *Hunt* test as a constitutional rather than prudential requirement. The Union's argument to this Court concludes with the assertion that "so far as we have been able to ascertain this Court has never squarely ruled on whether the third *Hunt* prong is an expression of the constitutional standing law or the prudential standing law." (Petition at 20).

Petitioner need look no further than this Court's opinion in *Warth* to discover that the third element of the *Hunt* test is indeed a constitutional rather than prudential standing consideration. In *Warth*, this Court differentiated between constitutional and prudential standing limitations on federal jurisdiction. 422 U.S. at 498-99. With respect to the constitutional element of standing, the Court stated, "In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit." *Id.* at 498. The Court then distinguished such constitutional concerns from the prudential limitations on standing:

> Apart from this minimum constitutional mandate, this Court has recognized other limits on the class of persons who may invoke the courts' decisional and remedial powers. First, the Court has held that when the asserted harm is a 'generalized grievance'

> shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. . . . Second, even when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interest of third parties.

Id. at 499 (citations omitted).

Congressional action, the Court held, may affect the requirements for establishing standing in two ways. Constitutional standing may be affected by Congress creating legal rights through statutory action, the invasion of which satisfies the first requirement — "actual or threatened injury" — of Article III. *Id.* at 500. The other two requirements of constitutional standing must still be met. With respect to *prudential* standing requirements, the Court stated that "the source of the plaintiff's claim to relief assumes critical importance with respect to the prudential rules of standing, that, apart from Art. III's minimum requirements, serve to limit the role of the courts in resolving public disputes." *Id.* The Court held that "Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules." *Id.* at 501. The Court also cautioned, however, that "Art. III's requirement remains: the plaintiff must still allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." *Id.*

Having differentiated between the two types of standing, the Court then went on to apply its principles to the three classes of plaintiffs suing in *Warth*. The first class of litigants were individuals who asserted they had standing as a class of persons

who had been damaged by the allegedly unconstitutional zoning ordinances at issue. *Id.* at 502. The Court held that these plaintiffs did not have constitutional standing to assert their claims because they could not establish the minimum requirements of Article III: "that, in fact, the asserted injury was the consequence of the defendants' actions, or that prospective relief will remove the harm." *Id.* at 505. The Court then considered the second class of plaintiffs, who were taxpayers claiming that they suffered economic injury because of the allegedly discriminatory zoning practices. *Id.* at 508. It was to these plaintiffs that the Court applied *prudential* standing requirements, holding that the prudential standing rule "bars litigants from asserting the rights or legal interests of others in order to obtain relief from injury to themselves" and denying standing. *Id.* at 509-510.

Finally, the Court considered the standing of the third class of plaintiffs, the associations asserting the monetary damage claims of their members. *Id.* at 510. To these plaintiffs, the court applied a test for *constitutional* standing. It held:

> Even in the absence of injury to itself, an association may have standing solely as the representative of its members. . . . The possibility of such representational standing, however, does not eliminate or attenuate the *constitutional* requirement of a case or controversy. . . . The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members brought suit. . . . So long as this can be established, and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of

> the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

Id. at 511 (emphasis added). The Court then concluded that the associations did not have constitutional standing because the relief they requested — monetary damages on behalf of their members — would require individualized proof. *Id.*

It is significant that in outlining this test for associational standing in *Warth*, the Court made clear that the standards it applied were *constitutional* rather than *prudential*. Later in *Hunt*, the Court took the constitutional test announced in *Warth* and, specifically citing *Warth*, enumerated its requirements: "an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." 432 U.S. at 343. Thus, it is clear that the *Hunt* test is a *constitutional* rather than *prudential* one. There is nothing in either *Warth* or *Hunt* which indicates that this Court believed any of the elements of the test to be anything other than constitutional.

Consequently, the issue which the Union urges support the grant of a writ of certiorari in this case — whether the third prong of the *Hunt* test is prudential or constitutional — is one that has long ago been decided by this Court. Given this Court's rulings in *Warth* and *Hunt*, there is no question but that the third prong of the *Hunt* test *is* constitutional and was correctly applied by the Eighth Circuit.

(b) The Union Is Not Exempt From Article III Standing Requirements Merely Because It Is The Statutory Representative Of Its Members.

The Union further argues that the Eighth Circuit erred "by assuming that the associational standing doctrine as stated in *Brock* and *Hunt* is fully applicable to a situation, such as the one here, where Congress has prescribed detailed procedures for appointing an entity as the representative of the interests of a class of individuals." (Petition at 20). The Union's argument appears to be in that it should not be required to establish constitutional standing as a part of its pleadings simply because it is a statutory representative under the National Labor Relations Act.

A similar argument was rejected by the Ninth Circuit in *United Union of Roofers, Waterproofers and Allied Trade No. 40 v. Insurance Corp. of America*, 919 F.2d 1398 (9th Cir. 1990). In that case, the Ninth Circuit, relying on the third prong of the *Hunt* test, affirmed the district court's ruling that a union plaintiff lacked standing to recover money damages for the unpaid wages of its members from a surety bond payment. *Id.* at 1399-1400. The union urged that it had "special representative obligations" to its members "that make it an appropriate association to sue for damages on behalf of its members." *Id.* The Ninth Circuit rejected this argument, holding, "Even assuming, *arguendo*, that a union does have a special representative duty to its members that distinguishes it from many other associations, there is absolutely no authority that such a factor would negate the required application of the test established in *Hunt*." *Id.* The court concluded, "[I]t is clear that individual Union members will have to participate at the proof of damage stage. There is no escaping the fact that the Union in this case cannot overcome the third hurdle placed before it by Supreme Court precedent." *Id.*

This Court has also refused to apply a "sliding scale" of

constitutional standing which would vary according to the claims asserted. *Valley Forge*, 454 U.S. at 484. In *Valley Forge*, the plaintiffs argued that because the establishment clause of the First Amendment was more "fundamental" than other constitutional clauses, the standard for determining whether plaintiffs had standing should be lessened. *Id.* This Court rejected that argument, holding that "[t]o the extent the Court of Appeals relied on a view of standing under which the Art. III burdens diminish as the 'importance' of the claim on the merits increases, we reject that notion." *Id.* It also added that "we know of no principled basis on which to create a hierarchy of constitutional values or a complementary 'sliding scale' of standing which might permit respondent to invoke the judicial power of the United States." *Id.*

The Union urges this Court to grant its petition in this case in order to establish the principle that "a separate judicial inquiry" into standing is not necessary when the plaintiff is a statutory representative. The Union has not, however, pointed to any "principled basis" on which to create "sliding scale" of constitutional standing which varies according to the congressional status of the party asserting the claim. This Court has held repeatedly that Congress may not abrogate Article III's requirement that there be a case or controversy. *Lujan*, 504 U.S. at 560; *Allen*, 468 U.S. at 751; *Gladstone*, 441 U.S. at 91; *Warth*, 422 U.S. at 501; *Trafficante*, 409 U.S. at 209. Were the Court to ignore its precedent in this area and adopt the Union's reasoning, it would effectively eviscerate the requirements of Article III of the Constitution.

It is significant that the Union has no authority and can point to no basis for the granting of a petition for writ of certiorari to adopt the novel and unprecedented theory that it is not subject to the case or controversy requirement of Article III of the Constitution merely because it is the statutory representative of its members. Such a theory is directly contrary to this Court's

rulings and constitutes an inadequate basis for the granting of the Union's petition.

(c) The Eighth Circuit's Holding Is Not Inconsistent With This Court's Opinion In *Hoosier Cardinal*.

The Union argues finally that the Eighth Circuit's analysis is flawed because it is inconsistent with this Court's holding in *International Union, United Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), in which this Court held that a union may sue under the Labor Management Relations Act for the monetary damages of its members under a collective bargaining agreement. (Petition at 23-24).

The Eighth Circuit's ruling is not, however, inconsistent with this Court's opinion in *Hoosier Cardinal*. As the Eighth Circuit recognized in its opinion, the claims in *Hoosier Cardinal* were made pursuant to the terms of a collective bargaining agreement, to which the union plaintiff was a signatory. 383 U.S. at 699. (App. at 8a). Thus the union in *Hoosier Cardinal* had standing because it was seeking "to vindicate employee rights under a contract the union had obtained," and because its interest in the case "implements no more than the established doctrine that the union's role in the collective bargaining process does not end with the making of the contract." *Id.* at 700. Here, the individual claims of its members which the Union pursued in its complaint were not brought pursuant to the collective bargaining agreement between the Union and Brown Shoe but under the statutory provisions of the WARN Act. There was no privity of contract and the rights of the union protected by the collective bargaining agreement were not implicated, as they were in *Hoosier Cardinal*. In accordance with the Court's holding in *Hoosier Cardinal*, the federal courts have held that individual employees do *not* have standing to enforce their Section 301 rights because they are not parties to the collective bargaining

agreement between the union and the employer. *Cleveland v. Porca Co.*, 38 F.3d 289 (7th Cir. 1994); *Katir v. Columbia University*, 15 F.3d 23 (2d Cir. 1994); *Martin v. Youngstown Sheet & Tube Co.*, 911 F.2d 1239, 1244 (7th Cir. 1990); *Vosch v. Werner Continental Inc.*, 734 F.2d 149, 154 (3d Cir. 1984), *cert. denied*, 469 U.S. 1108 (1985).

The law of standing set forth by this Court is clear and consistent. The Eighth Circuit's ruling was in harmony with the precedent of this Court, which it was bound to follow, as well as the holdings of the other federal courts of appeals. There is, therefore, no valid basis for the granting of the Union's petition for a writ of certiorari.

CONCLUSION

WHEREFORE, for these reasons, Respondent Brown Group, Inc. d/b/a Brown Shoe Company, respectfully requests that this Court deny Petitioner's Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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